



Item No. 3 Town of Atherton

CITY COUNCIL AND PLANNING COMMISSION STAFF REPORT –STUDY SESSION

TO: HONORABLE MAYOR AND CITY COUNCIL

THROUGH: GEORGE RODERICKS, CITY MANAGER

**FROM: STEPHANIE B. DAVIS, AICP PRINCIPAL PLANNER
ANDREAS BOOHER, DEPUTY CITY ATTORNEY**

DATE: DECEMBER 1, 2021

SUBJECT: DISCUSSION FOR CONSIDERATION OF AMENDMENTS TO CHAPTER 8.10 “REMOVAL OF AND DAMAGE TO HERITAGE TREES” AND 8.14 “HISTORICAL ARTIFACTS” OF THE ATHERTON MUNICIPAL CODE FOR PURPOSES OF ADDRESSING HISTORIC PRESERVATION IN TOWN.

RECOMMENDATION

It is recommended that the City Council receive a report from staff on the possibility of amending Chapter 8.10 “Removal of and Damage to Heritage Trees” and Chapter 8.14 “Historical Artifacts” of the Atherton Municipal Code for purposes of addressing Historical Preservation in the Town.

BACKGROUND

In 2020, staff was contacted by a property owner on the feasibility of entering into an agreement for the preservation of a single-family residential property within the Town pursuant to the Mills Act (Government Code § 50280–50290). The Mills Act is a California state law that allows cities to enter into contracts (commonly referred to as Mills Act Contracts or Historical Property Contracts) with the property owners of historic buildings and structures. The purpose of Historical Property Contracts is to provide for the continued preservation of a qualified historic property in exchange for a reduction of property taxes.

Local jurisdictions typically incorporate their Mills Act Program into their Historic Preservation Program. The Town does not have a Historic Preservation Program or any other form of a policy document regarding historical preservation practices to use in the consideration for creation of a Historical Property Contracts. While the Town does have a Historic Artifact Inventory, prepared in 2006, which identifies a list of registered or potential for registered historical structures and objects, as well as Chapter 8.16 “Historical Artifacts” of the Atherton Municipal Code (purposed to addressing existing and/or proposed historical artifacts) it does not identify any historical buildings, nor does it contain any information or criteria related to a Mills Act Program.

The Town's General Plan also references several buildings and structures within Town that were previously determined to be historically significant, however none are single family residences. These include:

- Watkins/Cartan House
- Water Tower, Holbrook-Palmer Park
- Gen Merrill Carriage House, Holbrook-Palmer Park
- Sacred Hearts Schools Main Building
- Menlo School, Stent Family Hall (Douglass Hall aka Payne-Douglass House)
- Perry Stable
- Caltrain Station, Town Center
- Town Hall (Council Chambers building), Town Center

On March 3, 2021, the City Council conducted a study session for purposes of discussing possible Municipal Code amendments in order to allow for future consideration of Mills Act contracts in Town. The Council directed staff to continue to evaluate the development of a historic evaluation / preservation program for the purpose of considering Mills Act contracts in Town. Staff began working Town Counsel on developing a stand-alone Historic Preservation Ordinance specific to historic buildings that may request a Mills Act Contract and, that did not integrate, nor change, any provisions to the existing Chapter 8.16 "Historical Artifacts" of the AMC.

While the City Attorney's office was drafting the Historic Preservation Ordinance, SB 9 began to take shape and was ultimately adopted. While SB 9 provides certain entitlements by right, subject to limited conditions and requirements, it does provide exemptions for where historic designations are involved. Given this development following the March 3, 2021, the City Attorney's office advised a more comprehensive review of the Town's Historical Artifact Ordinance (AMC Chapter 8.14) and Heritage Tree Ordinance (AMC Chapter 8.10) as part of the development of a Historic Preservation Ordinance.

By amending the Atherton Municipal Code to combine provisions regarding the preservation of trees with those relating to the preservation of historic artifacts and historic buildings, the Town underscores the importance that trees play in the Town's history. Furthermore, SB 9 affords certain discretion to local jurisdictions where a proposed development is "located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance." Therefore, the proposed organizational changes to the Atherton Municipal Code will make staff review of SB 9 applications more efficient with respect to determining whether any historical protections apply.

The City Attorney and staff have prepared a draft Historic Preservation Ordinance with language that repeals and replaces both Chapter 8.10 "Removal of and Damage to Heritage Trees" and Chapter 8.14 "Historical Artifacts."

Staff is seeking Council direction before developing final draft Ordinance for future, formal consideration.

ANALYSIS

A draft Historic Preservation Ordinance has been prepared for discussion (Attachment 1). Because the Ordinance incorporates and amends multiple Ordinances and a new Ordinance, it is not possible to provide a redline/strike version. Staff will go through any significant areas of change or new provisions.

The draft Ordinance proposes regulations covering Historic Artifacts, Historic Buildings, and Heritage Trees. Proposed draft language is tailored specifically for each of these topics, relative to its findings and purpose, definitions, procedures and processes, and other regulatory provisions. By combining existing AMC regulations pertaining to historical artifacts, with proposed amendments relative to historical buildings and heritage trees allows for a comprehensive Town “historical preservation” approach which may be easier for the community to understand and the Town to implement.

Historical Buildings and Artifacts

In the draft ordinance, provisions regarding Historic Artifacts and Historic Buildings are combined into a single chapter because of both share many definitions and processes related to their designation, preservation, and enforcement. Following the direction given by the Council at the March 2021 study session, staff has prepared language within the Ordinance that would allow for future consideration by the Commission and Council to consider any application requesting to enter into a Historical Property Contract. All of the essential provisions that existed in the original Historic Artifact Ordinance have been incorporated into the new Ordinance.

Some key provisions of the draft language prepared in Attachment 1 relative to historical buildings and/or artifacts and any subsequent requests for consideration of a Historical Property Contract, are:

- *Atherton Historical Register.* The Ordinance proposes to establish the Atherton Historical Register as a unified document maintained by the Town that lists historic artifacts, historic buildings, and historic trees.
- *Criteria and Findings for Designating a building Historic.* In accordance with Mills Act Law, a property/building must have federal, state, or local historical designation to be considered for a Historical Property Contract. As drafted, the Ordinance allows the City Council to designate a building historic, in addition to such building obtaining any state and/or federal listing, based on enumerated findings.
- *Procedures for Obtaining and Removing Historic designation.* Language has been drafted which specifies only the property owner of record can initiate a request for designation, and that such application would need to be heard first by the Planning Commission for a recommendation, then to the City Council for action. For removal, either a property owner can initiate such request, or the Town if said property is in violation of the AMC and/or the building is destroyed. Such a process is recommended to be considered by the City Council as it will clarify how removal of designation is to be achieved.

- *Activities and Process Relative to a Historical Alteration Permit for buildings and/or artifacts.* Language has been drafted, including definitions, on the type of work to either a historical artifact and/building that would trigger a historical alteration permit. Minor alterations and/or activities that could be considered ordinary maintenance or repair would be exempt. It is drafted that the Planning Commission would be the decision-making body on historical alteration permits and includes specific findings the Commission would need to make.
- *Historical Property (i.e., “Mills Act”) Contracts.* A separate article with the Ordinance has been drafted pertaining to application processes, procedures, submittal materials, and regulatory guidelines for any future Historical Property contracts, which would be implemented after a property/building has obtained qualified historical designation as discussed above. Given feedback received by the Council at the March 2021 study session, the following draft provisions have been included.
 - *Language Addressing Mills Act state law.* Mills Act Law allows property tax relief in exchange for the restoration and maintenance of their historic properties. The draft Ordinance includes language noting such and further specifies a required review by the San Mateo County (SMCO) Assessor’s Office prior to any final action taken. This would allow the Planning Commission and City Council to have a specific estimate as to the property owner’s property tax benefit / Town loss as each property will be different dependent on the age, condition and local market value. The formula to provide such estimate is set by State Board of Equalization and required to be administered by the local agency’s County Tax Collector office. Staff has contacted the SMCO Assessor’s office and confirmed their staff will be able to do so, should an Ordinance become enacted. It also includes detail as to the content of the contracts.
 - *Procedures.* Specification is included as to what any future application materials needs to contain, including a 10-year Restoration/Rehabilitation and Maintenance Plan that includes details describing the nature, cost and schedule of the rehabilitation, restoration or preservation work to be conducted on the property. It is drafted that any proposed Historical Property Contract be first considered by the Planning Commission at public hearing for a recommendation to the City Council; City Council holds a public hearing and takes action on the request and the draft Ordinance includes specific findings for the decision makers.
 - *Limitation on the number of Contracts.* In order to try and prevent any significant property tax loss to the Town, language has been drafted limiting no more than 5 contracts be active at any one time or no more than a \$25,000 annual property tax loss.
- *Clarifying Procedures Regarding Designation of Historic Artifacts.* The Atherton Municipal Code currently does not provide for removing the historical designation of Historic Artifacts. The draft Ordinance proposes these procedures and also conforms the initial designation procedures with those applicable to Historic Buildings.

Heritage Trees

In addition to combining Historic Artifacts and Historic Buildings in the same chapter, the Town’s Heritage Tree Ordinance shares a number of similarities with the definitions and processes described for these other categories and is therefore recommended to be incorporated into the same chapter. The draft ordinance proposes only two minor substantive changes to the existing Heritage Tree Ordinance:

- *Moving Regulatory Language Out of Definitions.* The current definitions contained in the Heritage Tree Ordinance contain some regulatory language. For ease of reference and clearer organization, those regulatory provisions are recommended to be moved into separate sections from the definitions.
- *Creating “Historic Tree” Subcategory of Heritage Trees.* The Heritage Tree Ordinance contains a category of heritage tree that is designated as such by the City Council “based upon findings that the particular tree is unique and of importance to the public due to its unusual age, appearance, location or other factors.” The draft Ordinance proposes to classify this category of heritage trees as “Historic Trees” and listing them in the Atherton Historical Register. The reason for this distinction for is that while other heritage trees are automatically considered heritage trees based on their species, size, and other objective criteria, these Historic Trees are determined to be within the category of heritage trees only after being determined to be historically significant by the City Council, much like Historic Artifacts and Historic Buildings.

A further reason for integrating the Town’s Heritage Tree Ordinance with the Historic Preservation Ordinance is that the motivations for both are closely aligned insofar as both concern the preservation of the historic character of the Town. With respect to trees, this is evidenced by the codified findings in the Heritage Tree Ordinance (AMC Section 8.10.010). In the future, when reviewing applications submitted pursuant to SB 9, having Historic Artifacts, Historic Buildings, and Heritage Trees within the same chapter underscores that each is a historically significant part of the Town.

POLICY FOCUS

Consideration of further evaluating the possibility of developing a comprehensive Historical Preservation Ordinance and updates to Chapter 8.10 could be found to support the following adopted General Plan goals:

- *Goal OSC-4: Protect both publicly and privately held cultural resources from deterioration and/or destruction.*
- *Policy OSC-4.1: Encourage the preservation of both private and public historical resources and artifacts for the benefit of future generations.*

FISCAL IMPACT

Historic designation of a building, property, artifact and/or heritage tree within Town has no fiscal impact. However, approval of any future Mills Act Contract would reduce the annual property tax

collected by the Town. The cost to potentially further study the topic would be included within the annual Planning Department budget.

GOAL ALIGNMENT

This report and its contents are in alignment with the following Council Policy Goals:

- Goal B – Preserve Small Town Character and Quality of Life
- Goal F – Be Forward-Thinking, Well-Managed, and Well-Planned

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town’s electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town’s electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item ____ has or X has not been before a Town Committee or Commission.

- ____ Audit/Finance Committee (meets every other month)
- ____ Bicycle/Pedestrian Committee (meets as needed)
- ____ Civic Center Advisory Committee (meets as needed)
- ____ Environmental Programs Committee (March 18, 2021)
- ____ Park and Recreation Committee (meets each month)
- ____ Planning Commission (meets each month)
- ____ Rail Committee (meets every other month)
- ____ Transportation Committee (meets every other month)
- ____ Tree Committee (meets each month)

ATTACHMENT

1. ***Draft*** Amendments, Chapter 8.14 Historic Preservation

ORDINANCE _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON REPEALING AND
REPLACING CHAPTER 8.10 and CHAPTER 8.14
OF THE ATHERTON MUNICIPAL CODE**

The City Council of the Town of Atherton does hereby ordain as follows:

SECTION 1: Chapter 8.10 and Chapter 8.14 of the Atherton Municipal Code are hereby repealed in their entirety and replaced with the following:

Chapter 8.14

HISTORIC PRESERVATION

ARTICLE I GENERAL PROVISIONS

8.14.100 Purpose

The purpose of this chapter is to implement the Atherton General Plan goal to “Protect both publicly and privately held cultural resources from deterioration and/or destruction” and policy to “Encourage the preservation of both private and public historical resources and artifacts for the benefit of future generations.” A further purpose of this chapter is to promote the general welfare of the Town by providing for the identification, protection, rehabilitation, enhancement, and use of buildings, structures and properties that reflect special aspects of the town’s historical, architectural, cultural or aesthetic heritage for the following reasons:

- A. To encourage public knowledge, understanding, appreciation and use of the Town of Atherton’s past;
- B. To foster civic pride in the beauty and character of the Town and the accomplishments of its past;
- C. To preserve the visual character of the Town by preserving buildings that reflect its history;
- D. To protect property values within the Town; and
- E. To balance the concerns of property owners with the community’s interests in preserving buildings of the town’s past.

8.14.110 Approval Authority

This chapter is enacted pursuant to California Government Code Section 37361(b) and 50280-50290.

8.14.120 Atherton Historical Register

The Atherton Historical Register is the official list of historic artifacts, historic buildings, and historic trees within the Town. The inclusion of historic artifacts, historic buildings, and historic trees listed in the Atherton Historical Register is governed by this chapter. The Atherton Historical Register is maintained by Town staff.

8.14.130 Definitions

- A. “Accidental damage” means unintentional damage. Accidental damage does not include damage that occurs during the course of construction where adequate protection measures were not employed.

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- B. "Alteration" means any work changing the exterior appearance and visual quality of character-defining features of a historical resource.
- C. "Alteration permit" means a permit approving an alteration to a historic artifact or historic building, structure, or a property determined eligible for historic resource designation pursuant to the provisions of this chapter.
- D. "Atherton Historical Register" is the official list of historic artifacts, historic buildings, and historic trees within the Town.
- E. "Character-defining features" means the elements embodying style, design, general arrangement and components of all of the exterior surfaces of any building including, but not limited to, the type of building materials and type and style of elements related to such building.
- F. "Demolition" means the act or process that destroys, completely or partially, any building.
- G. "Historic artifact" means a structure or object that meets the criteria for listing on the national, state, or local level, and that has been added to the Atherton Historical Register.
- H. "Historic building" means a building that meets the criteria for listing on the national, state, or local level, and that has been added to the Atherton Historical Register.
- I. "Historic integrity" means the authenticity of a resource's physical identity, evidenced by the survival of characteristics that existed during the resource's period of significance. Integrity is evaluated with regard to the retention of location, design, setting, materials, workmanship, feeling and association. It must also be judged with regard to the particular criteria under which a resource is proposed for eligibility.
- J. "Historic tree" means a tree so designated by the City Council and listed in the Atherton Historical Register based upon findings that the particular tree is unique and of importance to the public due to its unusual age, appearance, location or other factors;
- K. "Historical Property Contract" means an agreement between the Town and a property owner of an historic building pursuant to the Mills Act (California Government Code, Article 12, Sections 50280 – 50290) which may provide economic incentives to owners of qualified properties in the form of tax relief if they pledge to rehabilitate and maintain the historical and architectural character of their properties for at least a ten-year period.
- L. "Major alteration" means permanent changes to the visual character of a historical building or its setting, including, but not limited to, changes in size, surface treatment or location of a historic resource.
- M. "Minor alteration" means small changes to the details of a historical artifact or historical building, such as the replacement of missing or damaged elements. The relocation of a moveable object on the property is a minor alteration, and temporary removal of a structure from the property during restoration or for its protection during construction shall be treated as a minor alteration under this chapter.
- N. "National Register of Historic Places" means the official inventory of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology and culture which is maintained by the Secretary of the Interior under the authority of the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq., 36 C.F.R. Sections 60 and 63).
- O. "Owner" means the individual or entity whose name appears as the owner of a property on the last tax assessment roll of San Mateo County.

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- P. "Preservation" means the maintenance and repair of existing historically significant materials and features.
- Q. "Preventative maintenance" means work performed to aid in the preservation of historic artifacts and historic building. Examples of preventative maintenance include, but are not limited to, painting, grouting or repainting, foundation work or landscaping. Preventative maintenance does not include any work that changes materials, design, or appearance.
- R. "Reconstruction" means recreating damaged, degraded, or missing portions a property.
- S. "Rehabilitation" means repairing damaged or degraded portions of a property.
- T. "Repair" means fix or mend in a manner that returns to a former condition; for functional objects, repair includes returning the object to a functional condition.
- U. "Restoration" means bringing back, rehabilitating, reconstructing, or replacing in a historically accurate manner.
- V. "Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings" means the illustrated version of the Standards and Guidelines for Rehabilitation developed by the Technical Preservation Services Branch, Preservation Assistance Division of the National Park Service, as it may be amended.
- W. "Secretary of the Interior's Standards for the Treatment of Historic Properties" means principles developed by the National Park Service (36 C.F.R. Section 68.3, as it may be amended from time to time) to help protect historic properties by promoting consistent preservation practices and providing guidance to historic building owners and building managers, preservation consultants, architects, contractors, and project reviewers on how to approach the treatment of historic properties. The Secretary of the Interior's Standards for the Treatment of Historic Properties may also be referred to in this chapter as "Secretary of the Interior's standards."
- X. "State Historical Building Code" means California Code of Regulations, Part 8 of Title 24 (California Building Standards Code), as it may be amended.

ARTICLE II OBTAINING HISTORICAL DESIGNATION

8.14.200 Criteria for Designating Historic Artifact

- A. ***Preconditions to Listing.*** An artifact will only be considered for inclusion on the Atherton Historical Register, if one or more of the following is met:
 - 1. The artifact is listed on the National Register of Historic Places.
 - 2. The artifact is listed on the California State Historical Landmarks, Points of Interest, and the California Register of Historical Resources.
 - 3. The artifact is determined to be of local significance by the City Council.
- B. ***Determining Local Significance.*** The City Council may determine an artifact is of local significance if it can make any of the following findings with respect to the artifact:
 - 1. The artifact is associated with events that have made a significant contribution to the broad patterns of the Town’s history,
 - 2. The artifact is associated with a person that played a significant role in the Town’s history,
 - 3. The artifact embodies the distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction, that have yielded or may be likely to yield information important in history or prehistory of the Town, or
 - 4. The artifact is listed as a historically significant in the Historical Artifact Inventory maintained by the Atherton Heritage Association.

8.14.210 Criteria for Designating a Historic Building

- A. ***Preconditions to Listing.*** A building will only be considered for inclusion on the Atherton Historical Register, if one or more of the following is met:
 - 1. The building is listed on the National Register of Historic Places.
 - 2. The building is listed on the California State Historical Landmarks, Points of Interest, and the California Register of Historical Resources.
 - 3. The building is determined to be of local significance by the City Council.
- B. ***Determining Local Significance.*** The City Council may determine a building is of local significance if it can make any of the following findings with respect to the building:
 - 1. The building is associated with events that have made a significant contribution to the broad patterns of the Town’s history,
 - 2. The building is associated with a person that played a significant role in the Town’s history,
 - 3. The building embodies the distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction, that have yielded or may be likely to yield information important in history or prehistory of the Town, or
 - 4. The building is listed as a historically significant building in the Open Space and Conservation Element of the General Plan.

8.14.220 Procedures for Obtaining Historic Designation

- A. **Application for Designation.** Historic designation may only be sought by the owner of the property on which the proposed historic building or proposed historic artifact is located. Applications must be accompanied by such documentation as may be required by the Town Planner to evaluate the criteria described in Section 8.15.070. Applications must also be accompanied by a fee as set by City Council resolution.
- B. **Planning Commission Hearing.** The Planning Commission will hold a public hearing on the application in accordance with Section 17.06.090 of the Atherton Municipal Code. At the conclusion of the public hearing, the Planning Commission will make a recommendation to the City Council whether to add the proposed artifact or building to the Atherton Historical Register.
- C. **City Council Hearing.** Upon receipt of the Planning Commission recommendation, the City Council will hold a public hearing on the application in accordance with Section 17.06.080 of the Atherton Municipal Code. If the City Council approves an application, such approval shall be made by resolution and be communicated to the Atherton Heritage Association.

8.14.240 Procedures for Removing Historical Designation

- A. **Methods of Removing Historical Designation**
 - 1. **Application for Removal.** Removal of historic designation may be sought by the owner of the property on which the historic building or historic artifact is located. Applications must be accompanied by such documentation as may be required by the Town Planner. Applications must also be accompanied by a fee as set by City Council resolution.
 - 2. **Removal for Violation.** Town staff may seek removal of historic designation where a violation of this Chapter has resulted in damage to a historic artifact or historic building.
 - 3. **Removal Following Destruction.** Town staff may seek removal of historic designation where a historic artifact or historic building is destroyed, whether by accident or deliberate act.
- B. **City Council Hearing.** Upon receipt of an application, the City Council will hold a public hearing on the application in accordance with Section 17.06.090 of the Atherton Municipal Code. If the City Council approves an application, such approval shall be made by resolution and be communicated to the Atherton Heritage Association.

ARTICLE III OWNER OBLIGATIONS

8.14.300 Duty to keep in good repair

- A. The owner of a historic building or historic artifact shall ensure the preservation of the historic building or historic artifact by undertaking preventative maintenance.
- B. Preventive maintenance should be carried out in a fashion consistent with good preservation practice and consistent with the Secretary of Interior standards. Preventive maintenance activities include, but are not limited to cleaning, repainting of stone and masonry, and repainting of previously painted surfaces in the same or similar color that does not involve a change in design, material or the external appearance thereof.
- C. This section does not prevent the construction, reconstruction, alteration, restoration, demolition or removal of any historic building which has been certified by the Town Building Official, or Menlo Park Fire District Fire Chief, or other code enforcement officer as being in unsafe or dangerous condition which cannot be rectified through the use of the California State Historic Building Code.
- D. It shall be the duty of the Chief Building Official to enforce this section.

8.14.310 Activities requiring alteration permit

- A. *Historic Artifacts.* An alteration permit is required prior to work commencing on a historic artifact prior to any major alteration, demolition, removal, repair, or relocation of a historic artifact.
- B. *Historic Buildings Not Subject to a Historical Property Contract.* An alteration permit is required prior to work commencing on a historic building where the work will result in any of the following changes to the historic building:
 - 1. major alteration
 - 2. demolition
 - 3. removal
 - 4. relocation
 - 5. change to any exterior architectural feature
 - 6. removal or relocation of site improvements, structures, or natural features
- C. *Historic Buildings Subject to a Historical Property Contract.* In addition to the circumstances described in Subsection B, above, an alteration permit is required prior to work commencing on a historic building subject to a Historical Property Contract where

the work will result in any changes to? any feature specifically designated through the Historical Property Contract as requiring an alteration permit.

- D. *Exemption for Minor Alterations.* An alteration permit is not required prior to work commencing on a historic artifact or historic building where the work will be limited to minor alterations.

8.14.320 Alteration Permit Application Process

- A. *Application Process.* Applications for alteration permits shall be submitted to the Planning Department. Applications shall be submitted on the form provided by the Planning Department and must, at a minimum, include the following information:

1. A clear statement of the proposed work;
2. A site plan showing all existing buildings, structures, trees over six inches in diameter, property lines, easements and the proposed work;
3. Detailed plans showing both the existing and proposed exterior elevations, including a street elevation, photographs of windows and/or special features, materials and grading;
4. Specifications describing all materials to be used and all processes that would affect the appearance or nature of the materials;
5. Detailed narrative explaining how proposed improvements comply with the Secretary of the Interior's Standards for Historic Rehabilitation; and
6. Such other information or documents as may be requested by the Town Planner or the Planning Commission.

- B. *Town Planner Review.* After reviewing an application for an alteration permit, the Town Planner may require additional documentary materials, including an evaluation of the proposed alterations by a qualified historical preservation professional, prior to referring the application to the Planning Commission for consideration where the Town Planner determines additional information is necessary to assist the Planning Commission in making a determination on the application.

8.14.320 Planning Commission Consideration of Alteration Permit Applications

- A. *Planning Commission Hearing.* Following preliminary review by the Town Planner, alteration permits shall be considered by the Planning Commission. Consideration of applications shall be noticed as set forth in Section 17.06.080, hearings shall be held as set forth in Section 17.06.090, and appeals shall be processed as set forth in section 17.06.100 of Title 17 of this code.

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- B. **Required Findings.** To approve an alteration permit, the Planning Commission must find that:
1. The project complies with all provisions of this chapter,
 2. The project does not adversely affect the physical integrity or the historic significance of the historic artifact or Historical Property, and
 3. The project complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

The Planning Commission may conditionally approve an alteration permit, subject to such conditions that it deems necessary to maintain the historic significance of the historic artifact or historic building.

- C. **Commencing Work Following Approval.** After the Planning Commission approves or conditionally approves an alteration permit and the applicable appeal period has run, the Town Planner shall issue a written certificate of the alteration permit in accordance with the recommendation. No work shall commence until the certificate of the alteration permit has been issued.

ARTICLE IV HISTORICAL PROPERTY CONTRACTS

8.14.400 General Provisions

- A. **Purpose.** The purpose of this Article is to implement the Mills Act (Government Code Sections 50280-50290), allowing the approval of Historical Property Contracts by establishing a uniform procedure for the owners of qualified historic properties within the Town to enter into contracts with the Town.
- B. **Property Tax Relief Incentives.** In order to carry out more effectively and equitably the purposes of this chapter, the City Council may approve Historical Property Contracts pursuant to California Government Code, Article 12, Sections 50280 – 50290 which may provide economic incentives to owners of qualified properties in the form of tax relief if they pledge to rehabilitate and maintain the historical and architectural character of their properties for at least a ten-year period.
- C. **Applicability of the California Historical Building Code.** It is the purpose of the California Historical Building Code to provide regulations and standards for the rehabilitation, preservation, restoration (including related reconstruction) or relocation as applicable to all historical buildings, structures and properties deemed of importance to the history, architecture, or culture of an area by an appropriate local or state governmental jurisdiction. Such standards and regulations are intended to facilitate the restoration or change of occupancy so as to preserve their original or restored elements and features, to encourage energy conservation and a cost-effective approach to preservation, and to provide for reasonable safety from fire, seismic forces or other hazards for occupants and users of such "buildings, structures and properties" and to provide reasonable availability and usability by the physically disabled. Atherton has adopted the California Historical Building Code and any property subject to a Historical Property Contract is subject to that Code's requirements.
- D. **Limitation on the Number of Historical Property Contracts.** No more than 5 Historical Property Contracts or no more than a \$25,000 maximum cap on the annual amount of property tax loss to the Town shall be in effect at any one time in the Town of Atherton.

8.14.410 Procedures for Entering Into Historical Property Contract

- A. **Application for Historical Property Contract Consideration.** A request for a Historical Property Contract may be initiated by application of the property owner of a historical building listed on the Atherton Historical Register. In all cases an applicant for a Historical Property Contract shall utilize the form of application required by the Town. Applicants may apply for a Historical Property Contract by submitting the following information:
 - 1. Payment of the application fee. The Planning Department shall determine the amount of a fee necessary to compensate the Town for processing and administering an application for a Historical Property Contract. The fee shall pay

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for the time and materials required to process the application, based upon the estimated actual costs to perform the work. This fee shall be separate from the fee imposed following approval of the Historical Property Contract to pay for the actual costs of inspecting the qualified historical property, enforcing the Historical Property Contract and any required historical alteration permit.

2. A copy of current grant deed.
 3. A copy of the most current property tax bill.
 4. A complete, detailed site plan of the qualified historical property.
 5. Evidence that the property is a qualified historical property at a recognized federal or state level, including, but not limited to, a historical evaluation prepared by a licensed, qualified historian.
 6. A 10-year Restoration/Rehabilitation and Maintenance Plan that includes a detailed written narrative describing the nature, cost and schedule of the rehabilitation, restoration or preservation work to be conducted on the property (exterior and/or interior) that will preserve the character and integrity of the historic building (i.e. repair of original wood windows). Such work shall not include projects that do not contribute to the preservation of the Historical Property (i.e. installation of new kitchen appliances).
 7. Color photographs of all building exterior elevations, character-defining features of the structure(s), any interior photos of relevant areas where work may be proposed, both overall and detail views, and any additional related items (e.g., associated structures, house, garage, shed, and neighboring properties).
 8. A description of the public benefits that are intended if the Historical Property Contract is approved. Examples of such benefits are:
 - i. Allowing periodic public tours of the property.
 - ii. Commitment of a specified percentage of the property tax savings to rehabilitation and upgrading of the historical building.
 9. Any such additional information the Planning Department determines is necessary to make a recommendation on the Historical Property Contract.
- B. **Review by the Assessor's Office.** The Planning Department will refer any application for a Historical Property Contract to the San Mateo County Assessor's Office for review and recommendation. The Assessor will provide to the Planning Commission and City Council an estimate of the property tax calculations and the difference in property tax assessments under the different valuation methods permitted by the Mills Act so that the Town can evaluate the difference between property tax which would normally be

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collected by the Town and the property tax which would be collected pursuant to the Historical Property Contract. Any cost for the San Mateo County Assessor's Office in providing such estimate, shall be incurred by the project applicant.

- C. **Staff Review.** Upon receiving the tax calculations from the San Mateo County Assessor's Office, Town staff will work with the Owner to prepare a Historical Property Agreement for the Planning Commission's consideration. The terms and conditions of that agreement will vary from property to property but in all cases be subject to the requirements detailed in Section 8.14.420, below.
- D. **Planning Commission Hearing.** The Planning Commission will hold a public hearing on the application in accordance with Section 17.06.090 of the Atherton Municipal Code. At the conclusion of the public hearing, the Planning Commission will make a recommendation to the City Council whether to approve a Historical Property Contract.
- E. **City Council Hearing.** Upon receipt of the Planning Commission recommendation, the City Council will hold a public hearing to consider approving a Historical Property Contract in accordance with Section 17.06.080 of the Atherton Municipal Code.
- F. **Required Findings.** To approve a Historical Property Contract, the City Council must find that:
 - 1. The property is listed on the Atherton Historical Register,
 - 2. The property is significant due to its historic value, location, or other attribute,
 - 3. The applicant can preserve and, when necessary, restore and rehabilitate the property,
 - 4. The preservation and, when necessary, restoration and rehabilitation of the property will enhance the Town's inventory of historic and cultural resources, and
 - 5. Approval of the Historical Property Contract is consistent with the General Plan.

8.14.420 Content of Historical Property Contracts

All Historical Property Contracts shall set forth the agreement between the Town and the owner, and shall, at a minimum, contain the following provisions:

- A. **Mills Act Compliance.** The owner's commitment to comply with the requirements of the Mills Act (California Government Code, Sections 50280-50290).
- B. **Tax Benefit.** As long as the property owner properly rehabilitates, restores, preserves and maintains the qualified historical property as set forth in the Historical Property Contract, the Town shall comply with California Revenue and Taxation Code Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2 of Division 1, provided that the

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Assessor determines that the specific provisions of the Revenue and Taxation Code are applicable to the property in question.

- C. **Term.** All Historical Property Contracts shall be for a term of 10 years. Extensions may be considered on a case-by-case basis.
- D. **Property Maintenance.** The owner's commitment and obligation to preserve, rehabilitate, restore and maintain the property in accordance with the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation and the United States Secretary of the Interior's standards for the Treatment of Historic Properties.
- E. **Tax Assessment Impact.** An assessment of valuation in accordance with the San Mateo County Assessor's office and California State Board of Equalization.
- F. **Inspections.** Authorization for the Town to conduct periodic inspections of the interior and exterior of the property to determine the owner's compliance with the Historical Property Contract with inspections being conducted no less frequently than every five (5) years.
- G. **Assignment.** That the Historical Property Contract is binding upon, and shall inure to the benefit of, all successors in interest of the owner, including that the contract transfers with the property should the property be sold or otherwise transferred to another party during the term of the Historical Property Contract.
- H. **Indemnification.** The owner's indemnification of the Town for, and agreement to hold the Town harmless from, any claims arising from any use of the property.
- I. **Termination and Enforcement.** Agreement that the Town may cancel the Historical Property Contract, or seek enforcement of the contract, when the Town determines that the owner has breached the terms of the contract. The Town shall comply with the requirements of the Mills Act for enforcement or cancellation of the historical property contract.

8.14.430 Recordation and Notice After Effective Date of Historical Property Contract

- A. **Recordation.** Within thirty (30) days from the effective date of the Historical Property Contract, the owner shall record the Historical Property Agreement with the Recorder of the County of San Mateo.
- B. **Notice to State Parks.** Within six (6) months from the effective date of the Historical Property Contract, the owner shall provide a copy of the recorded Historical Property Contract to the Office of Historic Preservation to the Department of Parks and Recreation of the State of California within six (6) months following the Effective Date.

ARTICLE V HERITAGE TREES

8.14.500 Findings and Purpose

The town finds and declares as follows:

- A. The town is endowed with and forested by oaks, redwood, bay and other trees.
- B. The preservation of these trees is essential to the health, welfare and quality of life of the citizens of the town to:
 - 1. Preserve the scenic beauty of the town and to ensure the privacy of its citizens;
 - 2. Maintain ecological balance;
 - 3. Prevent erosion of topsoil;
 - 4. Protect against the hazards of floods and the risk of landslides;
 - 5. Counteract air pollutants and oxygenate the air;
 - 6. Absorb noise;
 - 7. Maintain the climatic and microclimatic balance; and
 - 8. Decrease high wind velocities.
- C. The town establishes the policies, regulations, and standards within this chapter with purpose and intent to:
 - 1. Establish policies and procedures for the protection of heritage trees and criteria for their removal.
 - 2. Prevent the indiscriminate removal of heritage trees within the town.
 - 3. Prohibit activities that damage and/or disturb heritage trees.
 - 4. Preserve and maintain trees in the attempt to mitigate hazards using the most current and applicable arboricultural standards.
 - 5. Provide for the enforcement and administration of tree protection and preservation.
- D. The town's heritage tree preservation standards and specifications document provides guidance on interpretation and implementation of the policies, regulations, and standards within this chapter.

8.14.510 Definitions

In addition to the definitions contained in Section 8.14.130, the following definitions shall apply to this Article:

- A. "Appraised value" means the value of a tree as determined by the town arborist using the most recent edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers for any procedure or requirement as specified in this chapter.
- B. "Building official" means the director of building and planning or their designee.
- C. "Certified arborist" means an individual possessing a current International Society of Arboriculture arborist certification.
- D. "Cutting" means the detaching or separating from a protected tree any substantial limb, branch, or root.
- E. "Dead or dangerous" tree means dead or dying trees, dead parts of live trees, or unstable live trees (due to structural defects or other factors) that are within striking distance of people or property, as determined by the town arborist.
- F. "Development project" means any construction activity that requires a demolition, grading, drainage, building, or landscape permit.
- G. "Diameter at breast height" is the measurement of trunk diameter taken at four and one-half feet (or fifty-four inches) above the natural grade. The diameter may be calculated by using the following formula: DBH equals circumference at four and one-half feet divided by 3.142.
- H. "Disfavored" tree means any of the following species:
 - 1. Acacia baileyana—Bailey acacia.
 - 2. Acacia decurrens—Green wattle.
 - 3. Acacia melanoxylon—Black acacia.
 - 4. Ailanthus altissima—Tree of heaven.
 - 5. Albizia julibrissin – Mimosa.
 - 6. Eucalyptus—Any species.
 - 7. Pinus radiata—Monterey pine.

It is strongly recommended that these trees not be planted in the town of Atherton.

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- I. “Disturbance or damage to a heritage tree” refers to demolition, construction, subterrain grading activities, landscaping improvements, other development activities and/or any other action, as determined by the building official or town arborist, which may cause damage to the health of a heritage tree, including any heritage tree within fifteen feet of the subject property line. Examples include, but are not limited to, excessive pruning, topping, cutting, girdling, poisoning, over-watering, unauthorized relocation or transportation of a heritage tree, trenching, excavating, altering the grade, compaction or paving near the tree, and screwing anything into the heritage tree (e.g., installing a tree house).
- J. “Dripline” means the outermost circumference of the heritage tree’s canopy, from which water drips to the ground. When depicted on a map, the dripline will appear as an irregularly shaped circle that follows the contour of the heritage tree’s branches as seen from overhead.
- K. “Excessive pruning” is considered disturbance and/or damage to the heritage tree and is prohibited unless approval is granted by the town arborist prior to initiating the work. The percentage and distribution of foliage to be removed shall be adjusted according to the plant’s species, age, health, and site. Topping and lion’s tailing shall be considered prohibited pruning practices for heritage trees. ANSI A300 (Part 1)-2017 is required to be followed.
 1. Lion’s tailing—The removal of interior lateral branches that results in a concentration of growth at the branch ends shall be considered an unacceptable practice.
 2. Topping—Is the reduction of tree size by cutting to stubs without regard for long-term tree health or structural integrity.
- L. “Heritage tree” means:
 1. A tree meeting any of the following conditions:
 - i. An oak tree (*Quercus lobata*, *Quercus agrifolia* or *Quercus douglasii*) located anywhere on a lot, that has a minimum trunk circumference of forty-eight inches or diameter of fifteen and two-tenths inches, as measured at fifty-four inches above the natural grade.
 - ii. A tree located outside the main buildable area that has a minimum trunk circumference of forty-eight inches or diameter of fifteen and two-tenths inches, as measured at fifty-four inches above the natural grade.
 - iii. A split trunk or low-branching tree located outside the main buildable area that has a minimum trunk circumference of forty-eight inches or diameter of fifteen and two-tenths inches, as measured at fifty-four inches above

the natural grade. If the trunk branches or splits below this point, the smallest circumference or diameter below the lowest branch shall be measured.

- iv. A multi-stemmed tree located outside the main buildable area that has a total trunk circumference of forty-eight inches or total diameter of fifteen and two-tenths inches when calculated as follows: considering all the branches at fifty-four inches above natural grade, add the measurement of the largest branch to one-half the measurement of each additional branch. Reference the Guide for Plant Appraisal authored by representatives to the Council of Tree and Landscape Appraisers.

Measuring Tree Size for Existing Trees {INSERT DIAGRAM}

Measuring Split Trunk Tree {INSERT DIAGRAM}

Measuring Multi-Stemmed Trees {INSERT DIAGRAM}

2. A tree that has been removed without a permit that cannot be measured pursuant to subsection (L)(1) of this section will be presumed to have been a heritage tree if it meets any of the following criteria:
 - i. The tree has a stump of at least seventeen and three-quarters inches in diameter as measured at the natural grade;
 - ii. The tree is a native oak with a minimum of seventy-five years of age;
 - iii. The tree is any other species of tree with a minimum of forty-five years of age, unless otherwise specified in this section;
 - iv. The tree is a redwood with a minimum age of thirty years of age;
 - v. In the absence of remaining physical evidence, photographs and other circumstantial evidence of characteristics, including but not limited to height, canopy dimensions, and similar trees in the immediate area may be used to create a presumption that the tree was a heritage tree.

Notwithstanding the foregoing, anyone may rebut this presumption by providing substantial evidence to the contrary to the satisfaction of the town arborist.

3. *Exemptions.* The trees listed below shall not be classified as heritage trees, regardless of their size or age, nor shall they be used for replacement plantings:
 - i. *Acacia baileyana*—Bailey acacia.
 - ii. *Acacia decurrens*—Green wattle.

- iii. *Acacia melanoxylon*—Black acacia.
 - iv. *Ailanthus altissima*—Tree of heaven.
 - v. *Albizia julibrissin*—Mimosa.
 - vi. *Eucalyptus*—Any species.
4. A tree that has been designated a historic tree by the City Council.
- M. “Injury” means bruising, scarring, tearing or breaking of roots, bark, trunk, branches or foliage, the application of herbicide or poisoning, natural issues such as weather, insects and animals, or any other action that is likely to cause the death of or irreparable damage to a heritage tree.
- N. “Irreparable damage” means any action undertaken by a person, as defined in this section, foreseeably leading to the death or permanent injury of the heritage tree, or which places the tree in a hazardous condition or an irreversible state of decline within one year from when action was taken. This includes, but is not limited to, cutting, topping, girdling, poisoning, trenching or excavating within the tree protection zone (TPZ), altering the grade, paving in excess of fifty percent of the dripline, excessive watering of oak trees, and excessive pruning.
- O. “Main buildable area” is the area defined by applicable setbacks in which primary development is allowed under the Atherton Municipal Code.
- P. “Natural grade” is the grade, as determined by the town arborist, unaffected by construction techniques such as fill, landscaping, or a berm.
- Q. “Person” means anyone having a property interest in a heritage tree. Property owners are liable under this chapter for all violations, whether they were done directly by the property owner or someone acting on their property with or without specific authorization, including but not limited to contractors, gardeners, and maintenance persons; provided, however, it shall not include persons acting under a right of easement without the direction of the property owner (e.g., PG&E).
- R. “Project arborist” means a private certified arborist retained by the property owner for the purpose of overseeing on-site activity involving the welfare of the heritage trees to be retained.
- S. “Pruning” means the selective removal of plant parts to meet the specific goals and objectives of ANSI A300 (Part 1).
- T. “Remove” or “removal” means any act that leaves the tree unviable, removes it from its location, relocates it from its location, or renders it “dead or dangerous” as determined by a certified arborist and approved by the town arborist.

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- U. “Street heritage tree” means any heritage tree growing within the street right-of-way, outside of private property and adjacent to the applicant’s property.
- V. “Town arborist” is an arboricultural professional working for the town of Atherton, and his or her designee.
- W. “Tree appraisal” means a method of determining the monetary value of a heritage tree (herein “appraised value”), using its pre-existing condition if it has been removed or damaged. A project arborist shall determine the appraised value as part of the required tree protection and preservation plan.
- X. “Tree preservation area” means the area outside the buildable area of the lot.
- Y. “Tree protection zone (TPZ)” is, unless otherwise specified by a project arborist or town arborist, the designated protection area sufficiently large enough to protect a heritage tree and its roots from disturbance and/or damage as defined in subsection of this section. The TPZ shall be determined and shall meet all provisions as detailed in the town’s current tree preservation standards and specifications document and may extend onto neighboring properties.

8.14.520 Prohibitions and Protections

- A. No person shall remove a heritage tree unless a permit has first been issued in accordance with Section 8.14.530.
- B. All heritage trees must be shown and designated on every plot map that may be required by the town in connection with any application for a subdivision, variance, use permit, special structures permit, or building permit. In addition, a heritage tree protection and preservation plan may be required with each application, as determined by the town arborist. The heritage tree protection and preservation plan shall adhere to the specifications found in the town’s current heritage tree preservation standards and specifications document. Said plan shall also show heritage trees which border the development area but are on a neighboring property or share a border within fifteen feet of the property line and shall include neighbor notification as prescribed in the town’s current heritage tree preservation standards and specifications document.
- C. No person shall disturb and/or damage a heritage tree by any means whatsoever, including, without limitation, those actions defined in Section 8.14.510(L), or conduct any prohibited activities within the defined TPZ as specified in the town’s current tree preservation standards and specifications document, unless a permit has first been issued by the town. Staff-level decisions about the TPZ may be appealed to the planning commission within ten days of the decision in writing to the town.
- D. The provisions of this chapter shall not be deemed to repeal or otherwise affect the provisions of Chapter 8.08, relating to dead or dangerous trees.

8.14.530 Permit Process

- A. The application for a heritage tree removal permit shall be filed with the building department on a prescribed form. The building department may require the applicant, at the applicant's expense, to furnish a written report from a certified arborist.
- B. If the heritage tree which is the subject of an application meets the requirements as set forth in this section and is determined by staff to be a dead or dangerous tree as defined in Section 8.14.510(E) and pursuant to Chapter 8.08, based upon a review of the permit application and the inspection report, then the building department shall grant the permit and attach reasonable conditions to ensure compliance with the intent and purpose of this chapter such as, but not limited to, requiring replacement of the tree or trees removed with plantings acceptable to the building department. Such replacements shall not require submittal of a bond.
- C. If the building department determines that the tree does not meet the requirements of a dead or dangerous tree and if the applicant requests planning commission review for removal and/or relocation, then the application shall be referred to the planning commission for consideration at a public meeting, noticed in accordance with Section 17.06.080(B). Each application for a heritage tree removal permit shall be accompanied by a fee in an amount as set by resolution of the city council sufficient to cover all costs of processing the permit. The application for planning commission review shall contain all requested information in order to be deemed complete.
- D. Planning commission shall hear all evidence presented, and shall grant the heritage tree removal permit unless it finds that the removal of the subject heritage tree would be contrary to the purpose and intent of the general plan of the town, while considering the following criteria:
 1. The probability of failure which is a function of heritage tree and site conditions such as, but not limited to, structural defects, presence of disease, species history, age or remaining life span, and varying weather conditions;
 2. The probability of a public safety hazard, personal injury or significant property damage as a function of proximity to existing structures and objects of value and interference with utility services;
 3. The number, species, size and location of existing trees in the area and the effect of the requested removal upon shade, noise buffers, protection from wind damage, air pollution, historic value, scenic beauty, health, safety and general welfare of the area and town as a whole;
 4. Good forestry practices such as, but not limited to, the age, number of healthy trees a given parcel of land will support and/or the long-term benefits of a proposed reforestation plan relative to existing site conditions;

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5. The necessity to remove or relocate the heritage tree(s) to allow for operation of existing solar panels that were installed prior to the planting of the heritage tree(s) on the subject or adjoining property; and
 6. The necessity to remove the heritage tree(s) to allow reasonable use or other enjoyment of the property when there is no demonstrated feasible alternative to the removal while meeting other adopted goals and policies of the general plan to the greatest extent feasible.
- E. At the discretion of the planning commission, for each heritage tree permitted to be removed the permittee may be required to plant three trees of fifteen-gallon container size, or two trees of twenty-four-inch box container size, or one tree of fifteen-gallon container size and one tree of thirty-six-inch container size. Replacement trees shall not be those listed as disfavored trees above. Where heritage oak trees are allowed to be removed from within the buildable area, they shall each be replaced with one or more trees of forty-eight-inch container size of oak species at a location approved by the planning commission. The planning commission may also attach other reasonable conditions to ensure compliance with the intent and purpose of this chapter.
- F. Any person required to plant replacement trees and/or relocate a heritage tree(s) pursuant to this section shall maintain such trees in a good and healthy condition to ensure permanent establishment of said trees, to the satisfaction of the town arborist. Such person shall execute a maintenance agreement with the town for a duration of between one year and three years, at the discretion of the town arborist. Such person shall also post a maintenance bond or security deposit equal to the appraised value of each tree that is planted and/or relocated. If the condition of the replacement planting(s) is not satisfactory to the town arborist during the term of the maintenance agreement, the town may take additional steps to ensure permanent establishment of replacement trees, including planting of new trees and/or an extension of the maintenance agreement and bond/security deposit. This requirement shall not apply to dead or dangerous trees.

The maintenance bond/security deposit shall be returned at permittee's request at the termination of the maintenance agreement, subject to the approval of the town arborist. The town shall attempt to notify permittee at the address on file. If no response is received from initial town attempt by thirty days from notification, then the town shall attempt a second time to notify the permittee. If after three years from the termination of the maintenance agreement the permittee has not requested the return of the maintenance bond/security deposit, the funds shall be considered forfeited and shall be deposited into the town's general fund and shall be purposed for projects and/or improvements as identified in the town's current adopted capital improvement plan (CIP) and/or other adopted town plan or program.

- G. The decision of the planning commission on any application for a heritage tree removal permit may be appealed to the city council in accordance with the procedures contained in Chapter [17.06](#).

8.14.540 Request for Exemption from Tree Protection Zone (TPZ)

Any request for an exception to the TPZ standards shall be processed in accordance with the town’s current heritage tree preservation standards and specifications document.

8.14.550 State Tree Care License

Except for the property owner, no person shall perform any removal of any heritage tree within the town of Atherton without a valid state tree care license as required by the state of California.

8.14.560 Criteria for Designating a Historic Tree

A tree will only be considered for inclusion on the Atherton Historical Register, if the City Council determines a tree is of local significance by making any of the following findings with respect to the tree:

- A. The tree is associated with events that have made a significant contribution to the broad patterns of the Town’s history,
- B. The tree is associated with a person that played a significant role in the Town’s history,
- C. The tree is of an unusual age, has a unique appearance, or is in an unusual location, or
- D. The tree is associated with or contributes to the significance of a historic artifact or historic building.

8.14.570 Procedures for Obtaining Historic Designation

- A. **Application for Designation.** Historic designation may only be sought by the owner of the property on which the proposed historic tree is located. Applications must be accompanied by such documentation as may be required by the Town Planner to evaluate the criteria described in Section 8.14.560. Applications must also be accompanied by a fee as set by City Council resolution.
- B. **Planning Commission Hearing.** The Planning Commission will hold a public hearing on the application in accordance with Section 17.06.090 of the Atherton Municipal Code. At the conclusion of the public hearing, the Planning Commission will make a recommendation to the City Council whether to add the proposed tree to the Atherton Historical Register.

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- C. ***City Council Hearing.*** Upon receipt of the Planning Commission recommendation, the City Council will hold a public hearing on the application in accordance with Section 17.06.080 of the Atherton Municipal Code. If the City Council approves an application, such approval shall be made by resolution and be communicated to the Atherton Heritage Association.

ARTICLE VI FEES, ENFORCEMENT, AND FINES

8.14.600 Application Fees

All fees described in this Chapter shall be set by resolution of the City Council.

8.14.610 Accidental Damage

- A. Failure to adequately protect a historic artifact, historic building, or historic tree from accidental damage does not relieve the owner from the duties described in this Chapter.
- B. In the event of accidental damage to a historic artifact, historic building, or historic tree, no fines or penalties will be imposed. Repairs shall be subject to review as described in Article III of this Chapter.
- C. In the event the damage to the historic artifact, historic building, or historic tree creates an unsafe situation, the property owner may mitigate the hazard and bring the historic artifact, historic building, or historic tree to a safe condition without the issuance of any permit. Such work must be reported to the town within seventy-two (72) hours.
- D. In the event the historic artifact, historic building, or historic tree is damaged by an act of nature, the property owner shall not be required to fully restore the historic artifact, historic building, or historic tree beyond bringing the artifact to a safe condition.

8.14.620 Enforcement and Fines Relating to Historic Artifacts and Historic Buildings

- A. It shall be a violation of this chapter to damage any historic artifacts or historic buildings through deliberate acts or negligence. Damage shall include undertaking any activity that would require an alteration permit, as described in Section 8.14.310.
- B. The provisions of this Chapter relating to Historic Artifacts and Historic Buildings shall be enforced pursuant to Chapter 1.21 of the Atherton Municipal Code. The provisions of this Chapter relating to Heritage Trees shall be enforced pursuant to Section 8.14.630.

8.14.630 Enforcement, Fines, and Appeals Relating to Heritage Trees and Historic Trees

- A. Any person causing a heritage tree to be disturbed and/or damaged in violation of this chapter shall submit an amount equal to one-half the appraised value of the heritage tree prior to such disturbance and/or damage, as a civil penalty in addition to the penalties as outlined in Chapter 1.20. If a heritage tree that has been disturbed and/or damaged dies within one year of the date of the citation, it will be presumed that the disturbance and/or damage caused the death and the penalties set forth in subsection B of this section shall apply instead of those herein.

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- B. Any person causing a heritage tree to be removed in violation of this chapter shall submit an amount equal to two times the appraised value of the removed heritage tree as a civil penalty in addition to the penalties as outlined in Chapter 1.20.
- C. Pursuant to Section 1.20.020, a civil action may be commenced to abate, enjoin, or otherwise compel the cessation of violation of any provision in this chapter. In a civil action brought pursuant to this chapter in which the town prevails, the court may award to the town all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action, and reasonable attorney fees.
- D. Where there has been a violation, the violator shall obtain a retroactive heritage tree removal permit for the previously conducted unlawful activity, subject to the full range of requirements and conditions as specified in Section 8.14.530.
- E. All remedies provided in this section shall be cumulative and are not exclusive.
- F. Appeals. Decisions by staff pursuant to this chapter are appealable to the planning commission and decisions by the planning commission are appealable to city council. All requests for appeal must be made in writing to town within ten days of the date of the contested decision and in accordance with the procedures contained in Chapter [17.06](#).

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SECTION 2: California Environmental Quality Act (CEQA) Finding.

This Ordinance is exempt from the environmental review requirements of CEQA pursuant to CEQA Guidelines Section 15331 which consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of historical resources in a manner consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitation, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer.

SECTION 3: Severability.

If any provision, section, subsection, sentence, clause, phrase, or word of this Chapter 8.15, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The City Council hereby declares that it would have passed this Chapter, and each provision, section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

SECTION 4: Effective Date and Publication.

This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Town of Atherton, a municipal corporation

Introduced this ___ day of _____, 2022.

Passed and adopted as an ordinance of the City Council of the Town of Atherton at a regular meeting thereof held on the ___ day of ____, 2021 by the following vote:

MAYOR: _____

Elizabeth Lewis

ATTEST: _____

ANTHONY SUBER, CITY CLERK

APPROVED AS TO FORM:

Mona Ebrahimi, City Attorney